

HR Weekly Podcast
5/9/2007

Today is May 9, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns the potential individual liability of state employees based on a theory of civil conspiracy.

On April 27, 2007, a federal jury found two state employee defendants to be liable for actual damages of \$510,000 under the plaintiff's theory of civil conspiracy. Plaintiff Calvin Anthony filed the lawsuit against his former employer, the South Carolina Department of Corrections. The Plaintiff also named Corrections' Deputy Director Robert Ward and Inspector General Charles Sheppard in their individual capacities.

The Plaintiff is a former warden of the Lee Correctional Institution, a facility that houses some of the most violent inmates in the prison system. He had worked for Corrections for twenty-four years when in 2002 he began to be supervised by Defendant Ward. The Plaintiff had previously received good evaluations from his supervisors; however, he did not receive any evaluations from Defendant Ward.

In July 2003, the Plaintiff received a Corrections memorandum about retirement opportunities related to the Teacher and Employee Retirement Incentive, or TERI, program. Defendant Ward initially encouraged the Plaintiff to participate in those retirement opportunities.

In January of 2004, Defendant Sheppard ordered a shakedown of Lee Correctional Institution based on a report that another Corrections employee was giving inmates inappropriate access to the cafeteria pantry and boiler room. Although the Corrections routine practice is to give a warden advance notice that a shakedown is going to occur, the Plaintiff was not notified. An investigator conducted the shakedown and found unsupervised inmates in the boiler room with keys to secured areas and unauthorized equipment.

According to the written documents in the case, the Plaintiff signed a form about four months later indicating his wish to participate in the retirement program. The date of the Plaintiff's retirement and rehire was to be effective a couple of months later.

After the shakedown and the Plaintiff's signing up for the retirement program, Defendant Ward charged the Plaintiff with gross negligence and falsification of official inspection reports. The Plaintiff alleges that Defendant Ward then informed him that Corrections would not rehire him after his retirement and that, if the Plaintiff did not retire, Defendant Ward would terminate his employment.

After receiving a right to sue letter, the Plaintiff filed his lawsuit, alleging various causes of action, including a civil conspiracy claim. The South Carolina Supreme Court has held that a "civil conspiracy" is (1) the combination of two or more persons (2) for the purpose of injuring the plaintiff (3) which causes special damages. The jury's verdict found that all three elements of civil conspiracy existed.

Both Defendants have filed a request for reconsideration to the federal district court of South Carolina. OHR will monitor the status of that request and any subsequent appeal and keep you updated.

If this verdict is not reversed on appeal, the availability of this remedy will have significant impact on the workplace. Employees in South Carolina would have potential exposure for individual liability based on their work behavior. Please consult with your agency's attorney concerning any specific efforts your agency should take in response to this case.

Thank you.